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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/661,520 09/13/00 WILK

P W07-469

COLEMAN SUDOL SAPONE P C
708 THIRD AVENUE FOURTEENTH FLOOR
NEW YORK NY 10017-4101

QM22/0509

EXAMINER

NGUYEN, K

ART UNIT

PAPER NUMBER

3712

DATE MAILED:

05/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/661,520

Applicant(s)

WILK, PETER J.

Examiner

Kien T Nguyen

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 September 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saitoh U.S. Patent 5,316,516.

Saitoh disclosed a novelty item comprising a housing (1) in the form of a bird; a sound reproduction system (43) mounted to the housing so as to remain hidden from casual visual inspection of the housing; a switch (44) mounted to the housing and operatively connected to the sound reproduction (43) for activating same in response to a moving of the housing near a human body. The switch or sensor (44) may be pyroelectric sensor for detecting infrared rays radiated from a human body (see column 4, lines 17-20). It is noted that Saitoh did not specifically teach the housing is in the form of a sea shell, and other types of switches such as gravity or proximity sensors as set forth in these claims. However, the difference in the shape of the housing appears to be merely a matter of design choice and does not contain any structural significance.


Therefore, it would have been obvious to one of ordinary skill in the art to modify the housing of Saitoh with any desired shape to accommodate any specific environment.

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Regarding the different types of switch, the specification of the present application indicated that different types of switch are merely alternative forms of a sensor and one sensor does not appear to have any significant advantage over the others. Therefore, it would have a matter of design choice to modify the sensor (44) of Saitoh with any equivalent sensor that is commercially available.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lipsitz et al shows a sound producing toy using sensor responsive to water. Shima shows a programmable motion-sensitive sound effects device having a motion-sensitive sensor. Curran shows an interactive toy having a gravity switch (119). Milner, Hoshi and Pearce show similar sound generating devices with variety of sensors.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien Nguyen whose telephone number is (703) 308-2493.


Kien T. Nguyen
Primary Examiner

ktn

May 7, 2001